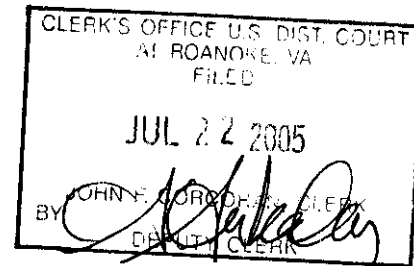


**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**



BRAULIO PEREZ-TORRES, Petitioner,)	
)	Civil Action No. 7:05-CV-00365
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
UNITED STATES,)	By: Hon. Norman K. Moon
Respondent.)	United States District Judge

Petitioner Braulio Perez-Torres, a federal inmate proceeding pro se, brings this motion for a certificate of appealability, pursuant to 28 U.S.C. § 2253(c)(1)(B). In his petition, Perez-Torres claims that this court erred in dismissing his motion to Vacate, Set Aside, or Correct Sentence on June 13, 2005. Under 28 U.S.C.A. § 2253(c)(2), the petitioner must make “a substantial showing of the denial of a constitutional right.” Perez-Torres has not shown that reasonable jurists would find his constitutional claims to be debatable. See Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). Therefore, the court denies Perez-Torres’s motion for a certificate of appealability.

In his motion, Perez-Torres alleges that his trial counsel was ineffective and that reasonable jurists would differ as to whether or not United States v. Booker, 125 S. Ct. 738 (Jan. 12, 2005) should be applied retroactively to cases on collateral review. Perez-Torres does not explain why his ineffective assistance of counsel claim is not time-barred by the one-year limitation period in 28 U.S.C. § 2255 ¶ 6. Perez-Torres cites three cases for the proposition that courts other than the United States Supreme Court can rule on the retroactivity of a Supreme Court decision. The court does not disagree, and in fact this court, and most around the country, have determined that Booker does not apply retroactively to cases on collateral review. Perez-Torres has not provided any explanation for why this court’s June 13, 2005 order was in error. Because Perez-Torres’s initial petition was untimely, the court must deny his motion for a certificate

of appealability. An appropriate order will be entered this day.

ENTER: This 22nd day of July, 2005

Norman L. Mon
UNITED STATES DISTRICT JUDGE